

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DEREK TUCSON, ROBIN SNYDER,  
MONSIEREE DE CASTRO, and ERIK  
MOYA-DELGADO,

Plaintiffs,

vs.

CITY OF SEATTLE, ALEXANDER  
PATTON, TRAVIS JORDAN, DYLAN  
NELSON, JOHN DOES (#1-4) AND JANE  
DOES (#1-2)

Defendants.

No. 2:23-cv-00017-MJP

[PROPOSED] STIPULATED  
PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends

only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material may include the following documents and tangible things produced or otherwise exchanged: ~~[The parties must include a list of specific documents such as “company’s customer list” or “plaintiff’s medical records;” do not list broad categories of documents such as “sensitive business material”].~~ (1) medical, psychological, employment, financial and family related records of plaintiff, defendants and/or third parties (including personal financial, medical, psychological or family related materials that are relevant to the action; personal financial, medical, psychological or family related materials, that are not relevant to this action will be redacted); (2) records that could implicate privacy rights of the individual defendants, plaintiff or third parties, including, but not limited to, personal identifying information (“PII”) such as date of birth, social security number, employee ID number, personal home address, phone number, e-mail address, criminal record number, driver’s license number, state identification number, private communications, social media content, and protected expressive activities; (3) personal financial information; (4) passport information; (5) immigration status; (6) video recordings within correctional facilities; (7) video recordings from officer body camera; (8) any information protected from release by statute and exempt from public disclosure; (9) police personnel files; (10) unsustained police internal investigations and disciplinary files; (11) unsustained complaints of police misconduct; and (12) non-public tactical policies and procedures and training protocols.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

1 However, the protections conferred by this agreement do not cover information that is in the  
2 public domain or becomes part of the public domain through trial or otherwise.

3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or  
5 produced by another party or by a non-party in connection with this case only for evaluation of the  
6 material or of the case, prosecuting and/or defending the case, evaluation experts and expert opinions  
7 or attempting to settle this litigation. Confidential material may be disclosed only to the categories of  
8 persons and under the conditions described in this agreement. Confidential material must be stored  
9 and maintained by a receiving party at a location and in a reasonably secure manner that ensures that  
access is limited to the persons authorized under this agreement.

10 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by  
11 the court or permitted in writing by the designating party, a receiving party may disclose any  
12 confidential material only to:

13 (a) the receiving party's counsel of record in this action, as well as employees of  
14 counsel to whom it is reasonably necessary to disclose the information for this litigation;

15 (b) the officers, directors, and employees (including in house counsel) of the  
16 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree  
that a particular document or material produced is for Attorney's Eyes Only and is so designated;

17 (c) experts and consultants to whom disclosure is reasonably necessary for this  
18 litigation and if provided copies of said material, have signed the "Acknowledgment and Agreement  
19 to Be Bound" (Exhibit A);

20 (d) the court, court personnel, and court reporters and their staff;

21 (e) copy or imaging services retained by counsel to assist in the duplication of  
22 confidential material, provided that counsel for the party retaining the copy or imaging service  
23 instructs the service not to disclose any confidential material to third parties and to immediately return  
all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary, or who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information-; and

(h) mediators and their staff.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court’s files.

## 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The

1 designating party must designate for protection only those parts of material, documents, items, or  
2 oral or written communications that qualify, so that other portions of the material, documents, items,  
3 or communications for which protection is not warranted are not swept unjustifiably within the ambit  
4 of this agreement.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
6 to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily  
7 encumber or delay the case development process or to impose unnecessary expenses and burdens on  
8 other parties) expose the designating party to sanctions.

9 If it comes to a designating party's attention that information or items that it designated for  
10 protection do not qualify for protection, the designating party must promptly notify all other parties  
11 that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement  
13 (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure  
14 or discovery material that qualifies for protection under this agreement must be clearly so designated  
15 before or when the material is disclosed or produced.

16 (a) Information in documentary form: (*e.g.*, paper or electronic documents and  
17 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
18 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
19 confidential material. If only a portion or portions of the material on a page qualifies for protection,  
20 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
21 markings in the margins).

22 (b) Testimony given in deposition or in other pretrial proceedings: the parties and  
23 any participating non-parties must identify on the record, during the deposition or other pretrial  
proceeding, all protected testimony. If a party or non-party desires to protect confidential  
information at trial, the issue should be addressed during the pre-trial conference.

1 (c) Other tangible items: the producing party must affix in a prominent place on  
 2 the exterior of the container or containers in which the information or item is stored the word  
 3 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the  
 4 producing party, to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 6 designate qualified information or items does not, standing alone, waive the designating party’s right  
 7 to secure protection under this agreement for such material after a meet and confer process. If the  
 8 parties cannot agree to the proposed designation the issue shall be brought to the attention of the  
 9 Court. Upon timely correction of a designation, as set forth above, the receiving party must make  
 10 reasonable efforts to ensure that the material is treated in accordance with the provisions of this  
 11 agreement.

## 12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
 14 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
 15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
 16 or a significant disruption or delay of the litigation, a party does not waive its right to challenge a  
 confidentiality designation by electing not to mount a challenge promptly after the original  
 designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
 18 regarding confidential designations without court involvement. Any motion regarding confidential  
 19 designations or for a protective order must include a certification, in the motion or in a declaration  
 20 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
 21 affected parties in an effort to resolve the dispute without court action. The certification must list the  
 22 date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face  
 23 meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement,

1 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
2 Bound” that is attached hereto as Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
4 MATERIAL

5 When a producing party gives notice to receiving parties that certain inadvertently produced  
6 material is subject to a claim of privilege or other protection, the obligations of the receiving parties  
7 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
8 modify whatever procedure may be established in an e-discovery order or agreement that provides  
9 for production without prior privilege review. The parties agree to the entry of a non-waiver order  
under Fed. R. Evid. 502(d) as set forth herein.

10 10. NON TERMINATION AND RETURN OF DOCUMENTS

11 Within 60 days after the termination of this action, including all appeals, each receiving party  
12 must ~~return delete or destroy~~ all confidential material ~~to the producing party that was produced by other~~  
13 ~~parties or nonparties~~, including all copies, extracts and summaries thereof. ~~Alternatively, the parties~~  
14 ~~may agree upon appropriate methods of destruction.~~

15 Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents  
16 filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial  
17 exhibits, expert reports, attorney work product, and consultant and expert work product, even if such  
materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until a  
19 designating party agrees otherwise in writing or a court orders otherwise.

20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21 /s/ Jessica Leiser with permission  
22 By: MacDONALD HOAGUE & BAYLESS  
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23 Seattle, Washington 98104  
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/s/ Jessica Leiser  
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*Attorneys for Plaintiffs*

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Marsha J. Pechman  
United States District Court Judge

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued  
by the United States District Court for the Western District of Washington on [date] in the case of  
*Derek Tucson, et al. v. City of Seattle, et al.*, 2:23-cv-00017-MJP ~~\_\_\_\_\_ [insert formal~~  
~~name of the case and the number and initials assigned to it by the court]~~. I agree to comply with  
and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge  
that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
solemnly promise that I will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with the provisions of  
this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western  
District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even  
if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

## CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

<p>Nathaniel Flack, WSBA # 58582          Braden Pence, WSBA #43495          MacDonald Hoague &amp; Bayless          705 Second Avenue, Suite 1500          Seattle, WA 98104</p> <p>Neil Fox, WSBA# 15277          Law Office of Neil Fox          2125 Western Avenue, Suite 330          Seattle, WA 98121-3573</p> <p><b><i>[Attorneys for Plaintiff]</i></b></p>	<p>( x ) Via Email  <a href="mailto:NathanielF@mhb.com">NathanielF@mhb.com</a>  <a href="mailto:LucasW@mhb.com">LucasW@mhb.com</a>  <a href="mailto:BradenP@mhb.com">BradenP@mhb.com</a></p> <p><a href="mailto:nf@neilfoxlaw.com">nf@neilfoxlaw.com</a></p>
<p>Jessica Leiser, WSBA # 49349          Brandon Rain, WSBA # 45247          Ghazal Sharifi, WSBA # 47750          Seattle City Attorney's Office          701 Fifth Avenue, Suite 2050          Seattle, WA 98104</p> <p><b><i>[Attorneys for Defendants]</i></b></p>	<p>( x ) Via Email  <a href="mailto:Jessica.Leiser@Seattle.gov">Jessica.Leiser@Seattle.gov</a>  <a href="mailto:Brandon.Rain@Seattle.gov">Brandon.Rain@Seattle.gov</a>  <a href="mailto:Ghazal.Sharifi@Seattle.gov">Ghazal.Sharifi@Seattle.gov</a></p>

/s/ Laura Sanabria  
 Laura Sanabria, Legal Assistant